

AMENDED IN ASSEMBLY MARCH 25, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2511

Introduced by Assembly Member Skinner

February 19, 2010

~~An act to amend Section 1789.35 of the Civil Code, and to amend Section 23036 of the Financial Code, relating to check fees. An act to add Chapter 2.5 (commencing with Section 23040) to Division 10 of the Financial Code, relating to deferred deposit transactions.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2511, as amended, Skinner. ~~Check fees. Deferred deposit transactions: recipients of unemployment benefits.~~

Existing law, the California Deferred Deposit Transaction Law, prohibits a person from offering, originating, making, or arranging a deferred deposit transaction without first obtaining a license from the Commissioner of Corporations. Existing law authorizes a licensee to defer the deposit of a customer's personal check for up to 31 days and prohibits the face amount of the check from exceeding \$300. Existing law prohibits a fee for a deferred deposit transaction from exceeding 15% of the face amount of the check and prohibits a licensee from directly or indirectly charging other fees, except as specified. Existing law makes a willful violation of these provisions a crime.

This bill would prohibit a licensee from offering, originating, or making a deferred deposit transaction, arranging a deferred deposit transaction for, or acting as an agent for, a deferred deposit originator, or, making, offering, brokering, or assisting a deferred deposit originator or customer in the origination of a deferred deposit transaction in California to a person who is receiving unemployment

benefits, as defined, unless the interest charged on the deferred deposit transaction, when calculated as an annual percentage rate, does not exceed 36%.

Because a willful violation of these provisions would be crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law prohibits a check casher from charging a fee of more than \$10 to set up an initial account and issue an optional identification card for providing check cashing services. Existing law makes these provisions applicable to transactions under the California Deferred Deposit Transaction Law.~~

~~This bill would make nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 2.5 (commencing with Section 23040)
2 is added to Division 10 of the Financial Code, to read:

3
4 CHAPTER 2.5. TRANSACTIONS WITH RECIPIENTS OF
5 UNEMPLOYMENT BENEFITS

6
7 23040. As used in this chapter, the following terms have the
8 following meanings:

9 (a) "Annual percentage rate" has the same meaning as set forth
10 in Section 1606 of Title 15 of the United States Code. All interest
11 shall be included in calculating the annual percentage rate.

12 (b) "Interest" means all charges payable directly or indirectly
13 by a borrower to a deferred deposit originator in relation to a
14 deferred deposit transaction, including any fee, returned check
15 fee, check cashing fee, and any ancillary product sold in connection
16 with the deferred deposit transaction.

17 (c) "Unemployment benefits" means direct cash payments made
18 under the Federal-State Unemployment Insurance Program or

1 any other state or federal unemployment insurance program,
2 whether provided through check, electronic benefits card, direct
3 deposit, or any other means.

4 23041. (a) Notwithstanding any other provision of this division,
5 a licensee shall not offer, originate, or make a deferred deposit
6 transaction, arrange a deferred deposit transaction for a deferred
7 deposit originator, act as an agent for a deferred deposit
8 originator, or, in whole or in part, make, offer, broker, or assist
9 a deferred deposit originator or customer in the origination of a
10 deferred deposit transaction in California to a person who is
11 receiving unemployment benefits unless the interest charged on
12 the deferred deposit transaction, when calculated as an annual
13 percentage rate, does not exceed 36 percent.

14 (b) No person shall seek to evade the provisions of this chapter
15 by any artifice, devise, or subterfuge, including by assisting a
16 customer to obtain a loan at a rate of interest that would be
17 prohibited by this chapter, making loans disguised as personal
18 property sales and leaseback transactions, or disguising loan
19 proceeds as cash rebates for the pretextual installment sale of
20 goods or services.

21 SEC. 2. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.

30 ~~SECTION 1. Section 1789.35 of the Civil Code is amended~~
31 ~~to read:~~

32 ~~1789.35. (a) A check casher shall not charge a fee for cashing~~
33 ~~a payroll check or government check in excess of 3 percent if~~
34 ~~identification is provided by the customer, or 3.5 percent without~~
35 ~~the provision of identification, of the face amount of the check, or~~
36 ~~three dollars (\$3), whichever is greater. Identification, for purposes~~
37 ~~of this section, is limited to a California driver's license, a~~
38 ~~California identification card, or a valid United States military~~
39 ~~identification card.~~

1 ~~(b) A check casher may charge a fee of no more than ten dollars~~
2 ~~(\$10) to set up an initial account and issue an optional identification~~
3 ~~card for providing check cashing services. A replacement optional~~
4 ~~identification card may be issued at a cost that shall not exceed~~
5 ~~five dollars (\$5).~~

6 ~~(c) A check casher shall provide a receipt to the customer for~~
7 ~~each transaction.~~

8 ~~(d) A check casher may charge a fee for cashing a personal~~
9 ~~check, as posted pursuant to Section 1789.30, for immediate deposit~~
10 ~~in an amount not to exceed 12 percent of the face value of the~~
11 ~~check.~~

12 ~~(e) Any person who violates any provision of this section shall~~
13 ~~be liable for a civil penalty not to exceed two thousand dollars~~
14 ~~(\$2,000) for each violation, which shall be assessed and recovered~~
15 ~~in a civil action brought in the name of the people of the State of~~
16 ~~California by the Attorney General in any court of competent~~
17 ~~jurisdiction. Any action brought pursuant to this subdivision shall~~
18 ~~be commenced within four years of the date on which the act or~~
19 ~~transaction upon which the action is based occurred.~~

20 ~~(f) A willful violation of this section is a misdemeanor.~~

21 ~~(g) Any person who is injured by any violation of this section~~
22 ~~may bring an action for the recovery of damages, an equity~~
23 ~~proceeding to restrain and enjoin those violations, or both. The~~
24 ~~amount awarded may be up to three times the damages actually~~
25 ~~incurred, but in no event less than the amount paid by the aggrieved~~
26 ~~consumer to a person subject to this section. If the plaintiff prevails,~~
27 ~~the plaintiff shall be awarded reasonable attorney's fees and costs.~~
28 ~~If a court determines by clear and convincing evidence that a breach~~
29 ~~or violation was willful, the court, in its discretion, may award~~
30 ~~punitive damages in addition to the amounts set forth above.~~

31 ~~SEC. 2. Section 23036 of the Financial Code is amended to~~
32 ~~read:~~

33 ~~23036. (a) A fee for a deferred deposit transaction shall not~~
34 ~~exceed 15 percent of the face amount of the check.~~

35 ~~(b) A licensee may allow an extension of time, or a payment~~
36 ~~plan, for repayment of an existing deferred deposit transaction but~~
37 ~~may not charge any additional fee or charge of any kind in~~
38 ~~conjunction with the extension or payment plan. A licensee that~~
39 ~~complies with the provisions of this subdivision shall not be~~
40 ~~deemed to be in violation of subdivision (g) of Section 23037.~~

1 ~~(e) A licensee shall not enter into an agreement for a deferred~~
2 ~~deposit transaction with a customer during the period of time that~~
3 ~~an earlier written agreement for a deferred deposit transaction for~~
4 ~~the same customer is in effect.~~

5 ~~(d) A licensee who enters into a deferred deposit transaction~~
6 ~~agreement, or any assignee of that licensee, shall not be entitled~~
7 ~~to recover damages for that transaction in any action brought~~
8 ~~pursuant to, or governed by, Section 1719 of the Civil Code.~~

9 ~~(e) A fee not to exceed fifteen dollars (\$15) may be charged for~~
10 ~~the return of a dishonored check by a depository institution in a~~
11 ~~deferred deposit transaction. A single fee charged pursuant to this~~
12 ~~subdivision is the exclusive charge for a dishonored check. A fee~~
13 ~~shall not be added for late payment.~~

14 ~~(f) No amount in excess of the amounts authorized by this~~
15 ~~section shall be directly or indirectly charged by a licensee pursuant~~
16 ~~to a deferred deposit transaction.~~

17 ~~(g) A licensee shall be subject to the provisions of Title 1.6C~~
18 ~~(commencing with Section 1788) of Part 4 of Division 3 of the~~
19 ~~Civil Code.~~